

LABOUR DEPARTMENT

The 21st September, 1994

No. 14/13/87-6Lab./302.-In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court, Gurgaon respect of the dispute between the workman and the management of M/s Raghbeer Machinery Pvt. Ltd. Chander Nagar, Gurgaon *versus* Ram Narain.

IN THE COURT OF MRS. NIRMAL YADAV AND PRESIDING OFFICER
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 84 of 1988.

Between

SHRI RAM NARAIN C/O MERCANTILE EMPLOYEES ASSOCIATION H-347 NEW RAJENDERA NAGAR NEW DELHI AND THE MANAGEMENT OF M/S. RAGHBEER MACHINERY, PVT. LTD. CHANDER NAGAR, GURGAON

Present:

Shri R. N. Roy, for the workman.

Shri M. M. Kaushal, for the management.

AWARD

1. In exercise of the powers conferred by clause(c) of Sub Section (i) of Section 10 of the Industrial Disputes Act 1947 (in short "the Act") the Governor of Haryana referred the following dispute between the parties mentioned above to this Court for adjudication - *vide* Haryana Government Labour Department endst number 19037-42 dated 4th May 1988:-

Whether the termination of services of Shri Ram Narain is legal and just? If not to what relief is he entitled?

2. The facts as stated by the petitioner are that he was employed as helper/peon with the respondent management with effect from 2nd October 1985 at the salary of Rs. 500 p.m. It is further stated that petitioner's services were orally terminated by the management with effect from 1st October 1987. It is stated that examination of petitioner's services amounts to retrenchment and the same is in violation of mandatory provisions of Section 25 F of the I.D. Act 1947.

3. Petitioner's claim is contested by the management. It is submitted that petitioner was appointed on probation for a period of six months - *vide* appointment letter dated 1st January 1987 as helper. Petitioner's work was reviewed before the expiry of the probation period and was not found to satisfactory therefore probation period was extended for three months, - *vide* letter dated 1st July 1987 which was duly received by the petitioner. Petitioner's work was again reviewed and was not found upto the mark therefore petitioner's services were terminated with effect from 1st October 1987, - *vide* letter dated 30th September, 1987. It is further submitted that services of the petitioner have been terminated in accordance with the terms of contract of service, therefore, termination does not amount to retrenchment under Section 2(00) of the I.D. Act. Accordingly no compensation was required to be given to the petitioner at the time of termination of his service.

4. In his rejoinder workman reiterated his claim and controverted the pleas taken in the written statement. In view of the pleadings of the parties following issue was framed on 14th September 1988:-

1. Whether the termination of services of Shri Ram Narain is just and legal? If not, to what relief is he entitled?

5. I have heard learned authorised representatives of the parties. My findings on the issues framed are as under:-

6. In order to prove their case management produced MW1 Shri Subhash Manchanda who stated that petitioner was appointed - *vide* letter Ex. M1 for a period of six months on probation. Appointment letter was received by the petitioner. During the period of probation petitioner's work was not found satisfactory therefore, probation period was extended for three months, - *vide* letter Ex. M2. Petitioner's services were terminated, - *vide* letter Ex. M3 which was sent by registered post to petitioner. Postal receipt of the registered letter is produced as Ex. M4. Petitioner did not come to collect the amount as mentioned Ex. M3

therefore another registered letter Ex. M5 was sent to the petitioner. Postal receipt of Ex. M5 is Ex. M6. When cross-examined witness denied that petitioner was appointed with effect from 24th October 1986 or that he was working with effect from 3rd October 1985. Witness denied that ESI card mark "A" was issued by respondent management. Witness denied that petitioner was appointed as Peon or Mali. Witness produced review reports regarding petitioner's work dated 28th September 1987 and 23rd July, 1987, which are Ex. M7 and Ex. M8. Witness further stated that provident fund of the petitioner was deducted with effect from April, 1987. It is further stated that ESI deductions of the petitioner were deducted with effect from 1st January 1987 and not from 1st October 1985. Witness produced ESI registered with effect from January 1985 to March 1988, according to which ESI contribution of the petitioner was made with effect from 1st January 1987.

7. On the other hand, petitioner appeared as WW1 and stated that he was appointed as Gardner/peon with effect from 2nd October, 1985. He produced ESI card Ex. W1. According to petitioner, he was getting Rs. 500 p.m. at the time of termination of his service with effect from 1st October, 1987. He further stated that management did not issued any notice, nor pay in lieu thereof was given to him. Management did not even pay retrenchment compensation to the petitioner. Petitioner admitted that appointment letter Ex. M1 bears his signature at point "A". He further stated that management terminated his services as petitioner had refused to work on the Pooja day. When cross-examined, witness admitted that ESI card Ex. W1 does not bear the name of any factory, nor it bears the signature of the management. Petitioner admitted his signature at point A, B and C of Ex. M-A and at point A of Ex. M-B. He also admitted his signature on Ex. M-C, Ex. M8 and Ex. M2. He further admitted that he received letters Ex. M3 and Ex. M5. He further stated that he is ready to take retrenchment compensation and pay in lieu of notice. He further admitted that gate pass Ex. W-2 does not bear signature of any officer of the respondent management. Witness admitted that writing at point "C" of Ex. M-A is in his hand writing. He further stated that he did not make any complaint to management or any other officer that the said writing was got forcibly written by him, nor he made any complaint that appointment letter Ex. M1 has been delivered later. He denied the suggestion that he was informed regarding his unsatisfactory work by the management.

8. Learned A.R. of the workman argued that management illegally terminated the services of the petitioner and termination is covered under the provisions of Section 2(00) of the I.D. Act, 1947. Therefore, management was under statutory obligation to comply with the provisions of Section 25-F of the I.D. Act. In the other hand, learned A.R. of the management argued that service of the petitioner was terminated during probation period keeping in view the terms and conditions of his appointment letter. Learned A.R. further argued that during probation period performance of the petitioner's work was reviewed from time to time and he was informed that his performance was not satisfactory. Petitioner was advised to improve his work, but he failed to improve his work, therefore, order simpliciter for termination of his service was issued.

9. In this case, date of appointment is disputed by both the parties. According to petitioner he was appointed with effect from 2nd October, 1985, whereas, according to management, he was appointed with effect from 1st January, 1987. Petitioner failed to produce any document to prove his date of appointment with effect from 2nd October, 1985. ESI card Ex. W1 produced by the petitioner does not show that petitioner had joined the management on 2nd October, 1985, nor is proved that this ESI card relates to the respondent management. On application for appointment Ex. M-1, it is written that the wages mentioned above are acceptable and that he would join duty with effect from 1st January, 1987. The date mentioned below the signature of Shri Ram Narain is 31st December, 1986. Petitioner while appearing as WW1 admitted in his cross-examination that application Ex. MA bears his signature at point A and the writing as point "C" is in his hand writing. Petitioner admitted his signature on joining report Ex. M-C. Petitioner also admitted his signature at point A on appointment letter Ex. M1. From the appointment letter Ex. M1, joining report Ex. M-C and application for appointment Ex. M-A, it is evident that petitioner was appointed with effect from 1st January, 1987. Petitioner failed to produce any cogent evidence that he was appointed with effect from 2nd October, 1985, therefore, it is well proved that petitioner joined the management with effect from 1st January, 1987. There is no dispute that services of the petitioner has been terminated during the period of probation. His appointment was made with effect from 1st January, 1987—vide letter Ex. M1. Clause II of the appointment letter provides that petitioner shall be on probation initially for a period of six months, which could be extended for any period, but the maximum period of probation shall not be extended beyond one year. It is further provided that petitioner's service could be terminated without assigning any reasons during or at the end of probation period without any notice or compensation in lieu thereof. Appointment on probation clearly pre-supposes that the conduct, performance, ability or capacity of the employee concerned is to be watched and reviewed during the period of probation. His service has to be confirmed only after the expiry of probation if his performance of work is found to be satisfactory during the period of probation and he is considered suitable for the post against which he has been appointed. If the decision to terminate the services of an employee is taken during the period of probation after taking into consideration the overall performance then it cannot be said that it amounts to his removal from service as punishment. Moreover, the appointing authority while examining the question as to whether service of such employee has to be terminated during the continuance of period of probation is entitled to look into any complaint against such employee for the purpose of making assessment of the performance of such employee. So far the facts of the present case are concerned management had taken into consideration the performance report Ex. M8 for the

period commencing from 1st January, 1987 to 15th June, 1987, petitioner was specifically advised to improve his work. The said performed report bears signature of the petitioner, which clearly shows that petitioner was apprised his performance and was directed to improve his work and conduct. Management also considered performance report Ex. M7 for the period commencing from 1st January, 1987 to 30th September, 1987 and a letter Ex. M3 was issued to petitioner wherein, it was specifically mentioned that petitioner's probation period was extended for three months and he was instructed to improve his performance, but he had not improved his performance, therefore, his services were terminated,—vide letter Ex. M5 with effect from 1st October, 1987. From these facts, it appears that management had taken decision on the total and overall assessment of work performance of the petitioner, which was not found to be satisfactory. It is now well settled as held in *C.M. Jitendra Kumar Versus Bharat Earth Movers Ltd.* (1985) Lab. I.C. 1833 (Kar) that termination of services in pursuance of clause in the service agreement during the period of probation for unsatisfactory work and conduct falls within the exception provided under clause (bb) of Section 2(00) of the Industrial Disputes Act, 1947. Therefore, provisions of Section 25F of the Act are not attracted in such a case. This view further finds support from judgement of our own Hon'ble High Court 1991 (78) FJR 250 *Sat Pal versus Associate Vice President, Human Resources, Sawraj Foundary Division, and other, 1993 LLR page 291 (S.C.) Governing Council of Kidwal Memorial Institute of Oncology Bangalore versus Dr. Pandurance Gadwalkar another.* In view of the above discussion, it is held that petitioner's services were legally terminated in view of the terms and conditions of his appointment during probation period. Petitioner Ram Narain is not entitled to any relief. Reference is answered and returned accordingly with no order as to cost.

NIRMAL YADAV,

Dated :
17th March, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endst. No. 523—24, Dated the 31st March, 1994.

A copy is forwarded to:—

1. The Labour Commissioner, Haryana, Chandigarh
2. The Labour Officer, Gurgaon.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./303.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon respect of the dispute between the workman and the management of M/s Raghbeer Machinery, Pvt., Chander Nagar, Gurgaon *versus* Lekh Raj Singh.

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON.

Reference No. 70 of 1988

Between

SHRI LEKH RAJ SINGH C/O MERCANTILE EMPLOYEES ASSOCIATION, H-347 NEW, RAJENDER NAGAR, NEW DELHI AND THE MANAGEMENT OF M.S. RAGHBEER MACHINERY PVT., LTD., CHANDER NAGAR ESTATE, GURGAON.

Present :

Shri R.N. Roy A.R., for the workman.

Shri M. Kaushal A.R., for the management

AWARD

1. In exercise of the powers conferred by clause (c) of Sub Section (1) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication—vide Haryana Government Labour Department Endst. No. 18556-61 dated 3rd May, 1988:—

Whether the termination of services of Shri Lekh Raj Singh is legal and just? If not, to what relief is he entitled?

2. The facts as claimed by the petitioner are that he was appointed as Fitter with the respondent management with effect from 1st December, 1986 at the salary of Rs. 696 p.m. It is further stated that management terminated his services with effect from 7th October, 1986. Termination of petitioner's service amounts to retrenchment. Termination is legal as the same is in violation of mandatory provisions of Section 25 F of the I.D. Act, 1947, therefore, petitioner be reinstated.

3. Petitioner's claim is controverted by the management. It is stated that petitioner was appointed with effect from 1st January, 1987 on probation of for six months. During the probation period petitioner's work was not found satisfactory, therefore, probation period was extended for three months,—vide letter dated 1st July, 1987. Petitioner's work was further reviewed that and it was found that he did not show any improvement during extended period of probation. Therefore, his services were terminated,—vide letter dated 29th September, 1987 in view of terms of his appointment letter. It is further submitted that termination of service does not amount to retrenchment therefore, he is not entitled to any statutory benefits as provided under Section 25F of the I.D. Act.

4. In his rejoinder, petitioner reiterated his claim and controverted the pleas taken in the written statement. On the pleadings of the parties, following issued was framed by my learned predecessor on 14th September, 1988:—

Whether the termination of services of Shri Lekl. Raj Singh is legal and just? If not, to what relief is he entitled?

5. I have heard learned authorised representatives of the parties. My findings on the issue framed are as under:—

6. In order to prove their case, management produced MW1 Subhash Manchanda, Assistant Personnel Officer, who produced Ex. M1 application for appointment submitted by the petitioner. He also produced appointment letter Ex. M2 issued to the petitioner. Letter Ex. M2 bears the signature of the petitioner at point "A". Witness produced joining report Ex. M3 submitted by the petitioner. It is further stated that performance report of petitioner Ex. M4 was prepared, which bears the signature of the petitioner at point "A". Probation period of the petitioner's service was further extended for the period of three months,—vide letter Ex. M5. Performance of the petitioner's work was not found satisfactory during extended period of probation. Copies of performance reports are produced as Ex. M6 and Ex. M7. Petitioner was discharged from service,—vide letter Ex. M8, which was sent to the petitioner through registered post. Copy of the postal receipt is produced as Ex. M9. Registered letters sent to the petitioner were received back. The said envelope is Ex. M11. Management sent another letter, copy of which is Ex. M12, by registered post. Postal receipt is Ex. M13 and envelope is Ex. M14, which was received with the report that addressee was not available. When cross-examined, witness stated that letter Ex. M8 was given to the petitioner on 29th September, 1987. He denied the suggestion that petitioner was on ESI sick leave from 29th September, 1987 to 6th October, 1987. Witness categorically stated that termination letter Ex. M8 was given by him to the workman on the morning of 29th September, 1987. On his refusal to accept, the same was sent through registered post.

7. On the other hand, workman appeared as WW1 and reiterated his claim. According to petitioner, he worked with the management for three days on trial basis from 20th October, 1986 to 22nd October, 1986 and thereafter, he was appointed as Fitter with effect from 1st December, 1986. He produced copy of trial slip Ex. W1 and ESI slip Ex. W2. According to him, his services were terminated on 7th October, 1987 and that he had continuously worked from the date of appointment till the date of termination. It is further stated that petitioner was on ESI sick leave from 29th September, 1987 to 6th October, 1987 and reported for duty on 7th October, 1987 alongwith fitness certificate Ex. W3, but he was not allowed to enter the factory premises. It is further submitted that no termination letter was given to him, nor any notice or retrenchment benefits were given to him. He categorically stated that his work and conduct was satisfactory during the period of his service. Petitioner admitted his signatures on Ex. M1 application and appointment letter Ex. M2 at point "A". He also admitted his signature on joining report at point "A". Petitioner admitted his signatures on performance report Ex. M4 and letter of extension Ex. M5. He admitted that residential address is correctly mentioned in termination letter Ex. M8 at point "A" but he denied having received the said letter. He denied having offered letter Ex. M-12 and retrenchment compensation by the management. It is further stated that ESI medical certificate was sent to the management by registered letter. Postal receipt is Ex. W4. He denied the suggestion that a certificate Ex. W2 was got prepared inconvinance with the ESI corporation.

8. The learned A.R. of the workman argued that management illegally terminated the services of the petitioner and termination is covered under the provision of Section 2(00) of the I.D. Act, 1947. Therefore management was under statutory obligation to comply with the provisions of Section 25-F of the I.D. Act. On the other hand, learned A.R. of the management argued that service of the petitioner was terminated during probation period keeping in view of the terms and conditions of his appointment letter. Learned A.R. further argued that during probation period performance of petitioner's work was reviewed from time to time and he was informed that his performance was not satisfactory. Petitioner was advised to improve his work, but he failed to improve his work, therefore, order simplicitor for termination of his service was issued.

9. In this case, there is dispute regarding date of appointment of the petitioner. According to petitioner he was appointed with effect from 1st December, 1986, whereas, according to management, petitioner was appointed with effect from 1st January, 1987. Petitioner produced Ex. W1 trail slip to show that he was appointed with effect from 20th October, 1986 on trial basis. According to workman he joined with effect from 1st December, 1986, but the petitioner has failed to produce any document to prove his assertion. From Ex. W1, it is only proved that petitioner has worked from 20th October, 1986 to 22nd October, 1986 on trial basis. Even on Ex. M1 application for appointment at point "C", it is mentioned that appointment terms are acceptable and he will join duty from 10th December, 1986. However, date at point "B" under the signature of the petitioner is mentioned as 26th October, 1986. There is no proof that petitioner joined duty with effect from 1st December, 1986. From the appointment letter Ex. M2 and joining report Ex. M3, it is evident that petitioner was appointed with effect from 1st January, 1987. In his cross examination, petitioner admitted his signatures on Ex. M2 and M3, on point "A". Therefore, it is well proved that petitioner joined the management with effect from 1st January, 1987. There is no dispute that service of the petitioner has been terminated during the period of probation. His appointment was made with effect from 1st January, 1987 vide letter Ex. M2. Clause II of the appointment letter provides that petitioner shall be on probation initially for a period of six months, which could be extended for any period, but the maximum period of probation shall not be extended beyond one year. It is further provided that petitioner's service could be terminated without assigning any reasons during or at the end of probation period without any notice or compensation in view thereof. Appointment on probation clearly pre-supposes that the conduct, performance, ability or capacity of the employee concerned is to be watched and reviewed during the period of probation. His service has to be confirmed only after the expiry of probation if his performance of work is found to be satisfactory during the period of probation and he is considered suitable for the post against which he has been appointed. If the decision to terminate the services of an employee is taken during the period of probation of an employee then it cannot be said that it amounts to his removal from service as punishment. More-over the appointing authority while examining the question as to whether service of such employee has to be terminated during the continuance of period of probation is entitled to look into any complaint against such employee for the purpose of making assessment of the performance of such employee. So far the facts of the present case are concerned, management had taken into consideration the performance report Ex. M4 for the period commencing from 1st January, 1987 to 15th June, 1987, petitioner was specifically advised to improve his work. The said performance report bears signatures of the petitioner, which clearly shows that petitioner was apprised of his performance and was directed to improve his work and conduct. Management also considered performance reports Ex. M6 and Ex. M7 for the period commencing from 16th June, 1987 to 22nd September, 1987 and a letter Ex. M5 was issued to the petitioner wherein, it was specifically mentioned that petitioner's probation period was extended for three months and he was instructed to improve his performance but he had not improved his performance, therefore, his services were terminated vide letter Ex. M8 with effect from 1st October, 1987. From these facts, it appears that management had taken decision on the total and overall assessment of work performance of petitioner, which was not found to be satisfactory. It is now, well settled as held in *C.M. Jitendra Kumar Versus Bharat Earth Movers Ltd.*, (1985) Lab. I.C. 1833 (Kar) that termination of services in pursuance of clause in the service agreement during the period of probation for unsatisfactory work and conduct falls within the exception provided under clause (b) of Section 2(00) of the Industrial Disputes Act, 1947. Therefore, provisions of Section 25F of the Act are not attracted in such case. This view further finds support from judgement of our own Hon'ble High Court 1991 (78) 250 Sat Pal *Versus* Associate Vice President, Human Resources, Swaraj Foundry Division, and another. 1993 LR page 291 (S.C.) *Governing Council of Kidwal Memorial Institute on Colony Bangalore Versus Dr. Pandurang Gadwalkar and another*. In view of the above discussion, it is held that petitioner's services were legally terminated in view of the terms and conditions of his appointment during probation period. Petitioner Lekh Raj Singh is not entitled to any relief. Reference is answered and returned accordingly with no order as to cost.

NIRMAL YADAV,

Dated:
9th March, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endst. No. 521/22, dated the 31st March, 1994.

A copy is forwarded to :-

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Gurgaon.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.